that our overall regulatory scheme fulfills this expectation in that the benchmarking and price cap approach is the primary method of regulating cable service rates with a

also violates the Administrative Procedures Act ("APA") and cannot stand. 5 U.S.C. § 706(2)(A). The Report & Order is arbitrary and capricious on its face. The validity of the Commission's entire benchmark regulatory scheme relies on the ability of cable operators to justify above-benchmark rates through cost-of-service showings. However, the Commission provides no vehicle for operators to do so. Instead, the Commission has delegated to the local franchise authorities what it could not do, namely, the development and application of cost-

Report & Order at ¶ 271. This information was specifically requested in the cost-of-service NPRM.[19] Even if the Commission's delegation of its duty to determine cost-of-service standards was within its discretion, which InterMedia submits it was not, how can the franchise authorities be expected to do what the FCC could not do?

Furthermore, the Commission has very clearly articulated its rationale why it will adopt uniform federal standards for cost-of-service showings which must be followed by all local franchise authorities. Uniform cost-of-service

franchise authorities to determine cost-of-service standards is exactly contrary to its stated goal of adopting fair, uniform standards.

An agency rule is arbitrary and capricious if that agency:

> has failed to consider an important aspect of

> inclined to construe this record as an implicit concession by the agency that it cannot justify the exclusions.

Id. The Commission in the instant proceeding has made no explanation or justification as to why it abandoned the requirement for a single set of uniform standards, even if only for an interim period. As noted above, the Act specifically directs the Commission to establish these standards, and it has not yet done so. Accordingly, the Commission's interim proposal to allow franchise authorities unlimited discretion in reviewing cost-of-service showings is fundamentally arbitrary and capricious, and a stay is warranted.

C. Grant of Stay Will Not Harm Other Interested Parties

InterMedia submits that there will be no harm to interested parties by the issuance of a stay of these regulations pending the outcome of the Commission's reconsideration proceeding and the NPRM on cost-of-service standards.[20] The possible sole benefit of implementing these regulations on September 1, 1993 will be reduced rates for cable television subscribers in franchise areas where cable operators are now charging above-benchmark rates and where these rates cannot be justified by a cost-of-service showing. This is not a situation where subscribers could potentially be harmed by cable operators

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[20] InterMedia is not requesting that the Commission stay its regulations governing the franchise certification process. InterMedia believes that franchise authorities should, if they desire, pursue their certifications as provided in the Report & Order. InterMedia is requesting only that the remaining portions of the Report & Order be stayed.

increasing their rates because the Commission's Freeze Order is still in effect.[21]

On the other hand, grant of this stay will spare cable operators, franchise authorities and the Commission from the futile exercise of preparing and reviewing essentially meaningless cost-of-service showings. The Commission's resources are already being tested in order to implement the other sections of the Act. Most importantly, InterMedia and other similarly situated cable operators will be spared irreparable harm. As noted above, InterMedia's harm is not compensable. Rates set below compensatory levels will not be recovered in subsequent rate setting proceedings. In contrast, the FCC and the franchise authorities will have the power to order rate reductions and other remedial measures to compensate subscribers once a fully developed regulatory regime is implemented.

Finally, all cable operators and franchise authorities will benefit from a single set of uniform standards. Allowing

operators generally clearly outweighs any possible short-term benefits to cable television subscribers and others.

D. The Public Interest Requires a Grant of Stay

As stated above, the public will not be harmed by a

television rates be continued as provided in the Freeze Order, as modified, during the pendency of the stay.[22]

Based on the foregoing, InterMedia respectfully requests that the Commission stay the September 1, 1993 effective date of its rate regulation rules, pending the ultimate disposition of the petitions for reconsideration of the Report & Order, and the rulemaking on cost-of-service standards.

Respectfully submitted,

INTERMEDIA PARTNERS

By: _____

Stephen R. Ross
Kathryn A. Hutton

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888 16th Street, N.W.
Suite 300
Washington, D.C. 20006

(202) 296-8600

Dated: July 28, 1993

[22] Since it is likely that completion of the cost of service rulemaking will take months, InterMedia suggests that operators be permitted to adjust their rates beginning January 1, 1994 for inflation and for external cost charges which may have occurred or arisen since the April 3, 1993 effective date of the freeze.

EXHIBIT 1

DECLARATION

I, David G. Rozzelle, am the Chief Executive Officer, Cable Operations, for InterMedia Partners and its affiliates ("InterMedia"). In that capacity, I am responsible for all cable operations of the company. InterMedia is a series of limited partnerships and corporations that operates and manages cable television systems in the states of Arizona, California, Georgia, Hawaii, Illinois, Iowa, Minnesota, North Carolina, South Carolina, Tennessee, and Wisconsin. As of June 30, 1993, InterMedia provided cable service to over 640,000 subscribers.

The new rate regulations released by the FCC on May 3, 1993, require InterMedia to choose between the benchmark method of regulation and the cost-of-service method of regulation. The FCC has attempted to explain the benchmark method through the release of its Report and Order and subsequent clarifications and, as presently structured, I have determined that the company will suffer a reduction of approximately 6.0% in gross revenues if the benchmark method is selected. This level of reduction probably will cause the company to breach certain of its loan covenants as more fully explained in the Declaration of Karen J. Linder, attached to this pleading.

Accordingly, InterMedia may choose to follow the cost-of-service method of rate regulation. I have read the FCC's Notice of Proposed Rulemaking (NPRM) on cost-of-service standards. However, the NPRM provides no guidance to estimate the impacts of that alternative on the company. Among other things, we need to know whether cost of debt and the value of certain intangibles will be included within the costs that can be recovered under the Commission's cost-of-service regulations. We believe that we may support our existing rate structure if debt service is a permitted cost. These are among the issues about which the FCC has requested comment and economic analysis. Thus, we would not choose the benchmark method if cost-of-service permitted us to support our existing cost structure.

Legally, under our existing franchise agreements, we may not suspend service pending resolution of these issues. Nor, can we suspend our revenue flow without breaching our loan agreements. In addition, we have agreed to rebuild our physical plants in a significant number of communities during franchise renewals and must borrow capital to do the rebuilds. If we fail to rebuild those systems as promised, we will be in default of those agreements. Thus, it is also critical to the company's financial well-being that we make the best choice between the two proffered methods of rate regulation so we can have continued access to capital through our banking and other debt resources.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 26th **day of July, 1993**

David G. Rozzelle

EXHIBIT 2

DECLARATION

I, Karen J. Linder, am Chief Financial Officer for InterMedia Partners and related InterMedia companies. Prior to my current position at InterMedia, I worked for six years as a lender to media and entertainment companies at The Bank of New York and Manufacturers Hanover Trust Company.

The InterMedia systems are funded by four separate and distinct financings. Three of InterMedia's financings are provided by banks, insurance companies and a large credit corporation. The fourth is financed with public debentures but will require a working capital line from a bank or banks sometime this year. These financings were

CERTIFICATE OF SERVICE

I, Susan Benson, a secretary in the law firm of Ross & Hardies, do hereby certify that true copies of the foregoing "Petition For Stay" were hand-delivered this 28th day of July, 1993 to the following:

Chairman James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Daniel M. Armstrong
Assoc. General Counsel-Litigation
Federal Communications Commission
1919 M Street, N.W., Room 602
Washington, D.C. 20554

Roy J. Stewart
Federal Communications Commission
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Washington, D.C. 20554

Susan Benson

Susan Benson